

NAME:	Allen Morsley , Reg No.#14718-056
ADDRESS:	P.O. Box 1000 Lewisburg , Pa. 17837 U.S.P.
or PLACE OF CONFINEMENT & PRISON NUMBER	
Note: If represented by an attorney, his name, address & telephone number	
Note: It is your responsibility to notify the Clerk of the Court, in writing of any change of address	

(1)  
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JUN - 6 2001

PER 12km

DEPUTY CLERK

## United States District Court

John Doe ,a/k/a Baldhead,Ra-leek,Alan Morseley.	<b>1: CV 01-1003</b>
FULL NAME: (Include name under which you were convicted)	CASE NO:
Petitioner,	(To be supplied by the clerk of the United States District Court)
vs.	PETITION FOR WRIT OF HABEAS CORPUS
Donald Romine	BY A PERSON IN FEDERAL CUSTODY
NAME OF WARDEN(or other authorized person having custody of petitioner)	28 U.S.C. § 2241
Respondent.	

### INSTRUCTIONS - READ CAREFULLY

This petition shall be legibly handwritten or typewritten. signed by the petitioner, under penalty of perjury. You must set forth **CONCISELY** the answer to each question in the proper space on the form. Any false statement of a material fact may serve as the basis for prosecution and conviction for perjury.

You must not attach separate pages to this except that **ONE** separate additional page is permitted in answering Question No. 9.

Upon receipt of a fee of \$5.00, your petition will be filed if it is in proper order.

If you are seeking leave to proceed in forma pauperis (without paying the \$5.00 fee and other court costs), then you must also execute the declaration on the last page, setting forth information which establishes your inability to pay the fees and cost of the proceedings or to give security therefor. If you wish to proceed in forma pauperis, you must have an authorized officer at the penal institution complete the certificate as to the amount of money and securities on deposit to your credit in any account in the institution. If your prison account exceeds \$25.00, you must pay the filing fee as required by the rule of the district court.

When the petition is completed, the *original and two copies* must be mailed to the Clerk of the United States District Court for the

Only one sentence, conviction or parole matter may be challenged in a single petition. If you challenge more than one, you must do so by separate petitions.

Petitions which do not conform to these instructions will be returned with a notation as to the deficiency.

**PLEASE COMPLETE THE FOLLOWING: (check appropriate number)**

This petition concerns:

1.  a conviction
2.  a sentence
3.  jail or prison conditions
4.  prison discipline
5.  a parole problem
6.  other

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**PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY**

**PETITION**

1. Place of confinement U.S.P Penitentiary , P.O. Box 1000 , Lewisburg , Pa.17837
2. Name and location of court which imposed sentence U.S. District Court for the Eastern District of North Carolina
3. The indictment number or numbers (if known) upon which, and the offense or offenses for which, sentence was imposed:  
 (a) 93-102-07-CR-5-F  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_
4. The date upon which sentence was imposed and the terms of the sentence:  
 (a) March 8, 1994  
 (b) \_\_\_\_\_  
 (c) \_\_\_\_\_
5. Check whether a finding of guilt was made:  
 (a)  After a plea of guilty  
 (b)  After a plea of not guilty  
 (c)  After a plea of nolo contendere
5. If you were found guilty after a plea of not guilty, check whether that finding was made by:  
 (a)  a jury  
 (b)  a judge without jury
7. Did you appeal from the judgment of conviction or the imposition of sentence?  
 Yes  No
8. If you did appeal, give the following information for each appeal:  
 (a)(1) Name of Court U.S. Court of Appeals for the Forth Circuit.  
 (2) Result Affirmed  
 (3) Date of Result August 8, 1995  
 (4) Citation or number of opinion Unknown

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**PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY**

(5) Grounds Raised (list each) Trial court made erroneous evidentiary ruling

- (A) \_\_\_\_\_
- (B) \_\_\_\_\_
- (C) \_\_\_\_\_
- (D) \_\_\_\_\_

(b)(1) Name of Court N/A

(2) Result N/A

(3) Date of result N/A

(4) Citation or number opinion N/A

(5) Grounds raised (list each) N/A

(A) \_\_\_\_\_ N/A

(B) \_\_\_\_\_ N/A

(C) \_\_\_\_\_ N/A

(D) \_\_\_\_\_ N/A

**CAUTION:** If you are attacking a sentence imposed under a federal judgment, you must first file a direct appeal or motion under 28 U.S.C. § 2255 in the federal court which entered judgment.

9. State **CONCISELY** every ground on which you claim that you are being held unlawfully. Summarize briefly the facts supporting each ground. If necessary, attach a SINGLE page only behind this page.

**CAUTION:** If you fail to set forth all grounds in this petition, you may be barred from presenting additional ground at a later date.

(a) Ground One In Light of the Supreme Court's recent decision in Apprendi and Jones, the petitioners sentence cannot exceed the statutory maximum for the offenses, which carried the most lenient statutory prescribed sentence

Supporting FACTS (tell your story **BRIEFLY** without citing cases or law).

**CAUTION:** You must state *facts not conclusions* in support of your grounds. A rule of thumb to follow is - who did exactly what to violate your rights at what time or place.

Petitioner argues that because the activity alleged in count One (1) of the indictment involved a [variety] of offenses, and the jury rendered a simple general verdict, without stating which offenses the petitioner was guilty, then his sentence of Life, exceeded the statutory maximum, that could be imposed.

**PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY**

(b) Ground Two [See Attached supplemental pages]

Supporting FACTS (Tell your story *BRIEFLY* without citing cases or law).  
[see Attached supplemental pages]

(c) Ground Three [See Attached supplemental pages]

Supporting FACTS (Tell your story *BRIEFLY* without citing cases or law).  
[See Attached supplemental pages]

(d) Ground Four

Supporting FACTS (Tell your story *BRIEFLY* without citing cases or law).

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY

[ ATTACHED SUPPLEMENTAL PAGE 5-of-9 ]

**Ground Two:** THE COURT WAS WITHOUT SUBJECT MATTER JURISDICTION TO ENTERTAIN THE INDICTMENT AGAINST PETITIONER, WHERE THE AUSA , UNCONSTITUTIONAL AMENDED THE INDICTMENT.

Following a wiretap investigation of drugs and weapons dealing , this case was presented to a grand jury. The targets of the investigation were identified and indicted. Evidence was presented that the name of a unknown person was heard over the wiretap. No evidence was presented identifying the name and therefore , when the content of the intercepted conversation was presented , the person was designated as "John Doe." During the course of the excution of a warrant on September 23rd 1993 , petitioner was arrested and a theory was developed by the arresting officers , that petitioner was "John Doe." The case was never re-represented to the grand jury for a Superseding Indictment in order for the grand jury to rule of indict petitioner as "John Doe," the grand had to be made aware of petitioners existence.

The Rub was that the grand jury indicted one defendant as "John Doe." There was not scintilla of evidence before the grand jury , that petitioner was the one intended to be John Doe. And petitioner further acerts the A.U.S Attorney Mrs. Christine B. Hamilton , Amended the Indictment when she put petitioners identity beside :John Doe." Infact during petitioners Trial , the A.U.S. Attorney , Hamilton stated that she asked Agents Fannely and Moss to bring government witness (Fletcher Johnson) , who never testified before the grand jury concerning petitioners , Name , Height , Weight , or even Race , to the Raleigh Police Department on 9/23/93, to make sure that they had the right person , even after the grand jury had handed down the indictment almost three Months earlier, 7/6/93.

Yet at trial , the A.U.S. Attorney Hamilton , guaranteed that Agents Fannely and Moss knew who they had arrested. yet in open court , under Oath , both Agents

[ ATTACHED SUPPLEMENTAL PAGE 5-of-9-2 ]

Fannely and Moss testified that they had [no] personal knowledge who "John Doe," or a/k/a baldhead , a/k/a Roy lee , a/k/a Raleighs identity was , stating clearly to the Magistrate Judge Alexander B. Denson , as well as the trial Judge James C. Fox , that they were acting off a tip from a informant who they never used before , when they were excuting a "John Doe" warrant on 9/23/93 were petitioner was arrested and detained to stand trial. While addressing petitioners objections to the Amendment of the Indictment , the trial Judge James C.Fox . overrule petitioners objections stating : "That the grand jury indicted somebody and it was a question for the petit jury to decide who that person was."

Most importantly , when the jury was being charged in the courts instructions , the court instructed them [without] petitioner being charged and indicted as "John Doe" but instead the court used ,(Allen Morsley , a/k/a Baldhead , a/k/a Ra Leek.)(See Attached pages of the courts instructions at 1211,1212,1213. Also see the verdict sheet where the name Allen Morsley was also used ,Exhibit A-4).

Petitioner contends that the A.U.S. Attorney and the court [unconstitutional] Amended the indictment in violation of his Sixth Amendment Right.

0. Have you ever filed previous petitions for habeas corpus, motions under Section 2255 of Title 28, United States Code, or any other applications, petitions or motions with respect to this conviction?  
 Yes       No

1. If your answer to Question No. 10 was yes, give the following information:

(a)(1) Name of Court U.S. District Court for the Eastern District of North Carolina

(2) Nature of proceedings 28 USC § 2255 Motion

(3) Grounds raised \_\_\_\_\_

(4) Result Denied

(5) Date of Result August 4, 1998

(6) Citation or numbers of any written opinions or orders entered pursuant to each disposition.

 No. 97-7813 (unpublished per curiam opinion)

(b)(1) Name of Court N/A

(2) Nature of proceedings N/A

(3) Grounds raised N/A

(4) Result N/A

(5) Date of Result N/A

(6) Citation or numbers of any written opinions or orders entered pursuant to each disposition.

N/A

12. If you did not file a motion under Section 2255 of Title 28, United States Code, or if you filed such a motion and it was denied, state why your remedy by way of such motion is inadequate or ineffective to test the legality of your detention.  
 The petitioner cannot meet the gatekeeping provision for filing a successive Petition in order to avail himself of the recent Supreme Court ruling in Apprendi New Jersey, 147 L.ED 2d 435 (2000).

PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY

13. Are you presently represented by counsel?  Yes  No

If so, name, address and telephone number \_\_\_\_\_

Case name and court \_\_\_\_\_

14. If you are seeking leave to proceed in *forma pauperis*, have you completed the declaration setting forth the required information?

Yes  No,

WHEREFORE, petitioner prays that the court grant petitioner relief to which he may be entitled in this proceeding.

\_\_\_\_\_  
*Signature of Attorney (if any)*

I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct.

Executed on

May 28, 2001  
(date)

Alan Moseley  
*Signature of Petitioner*

\_\_\_\_\_  
PETITION FOR WRIT OF HABEAS CORPUS BY A PERSON IN FEDERAL CUSTODY

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF PENNSYLVANIA

ALLEN MORSLEY ,  
PETITIONER

\*

Dt.No.

(By Clerk)

v.

\*

\*

\*

\*

\*

\*

\*

DONALD ROMINE (WARDEN) ,  
RESPONDENT.

WRIT OF HABEAS CORPUS PURSUANT TO TITLE  
28 U.S.C SECTION § 2241(c)(3) , WITH  
INCORPORATED MEMORANDUM OF LAW.

Now comes , the petitioner , Allen Morsley , pro se , and pursuant to Title 28 U.S.C. §2241 , and respectfully moves this Honorable Court to Issue a Writ , based upon the ground that pursuant to the Recent Supreme Court's decision in both , Apprendi v. New Jersey , and Jones v. United States , his sentences impose under the Indictment [exceed] the Statutory Maximum for the offenses , are constitutionally infirm. In support thereof , petitioner asserts the following.

JURISDICTION

This Court has Jurisdiction to entertain petitioners 28 U.S.C. §2241 Motion. Jurisdiction is invoke in Harris v. United States , No. Civ.A. 00-5194 , 2000WL 1641073 (D.N.J. Nov 1 , 2000) , where the Hon.Judge Irenas , held that an Apprendi , supra , based claim is [one] of the few instance where Dorsainvill , operates to "permit a § 2241 challenge to the Lawfulness of A Federal Sentence where relief under § 2255 is foreclosed." See In Re Vial v. United States , 115 F.3d 1192

(4th cir 1997) , stating; New Rule of Constitutional Law would [not] be available until Supreme Court declared applicability of that Rule to collateral proceedings. Thus , since petitioner is Actually Innocent of the sentence imposed , and he can not meet the gatekeeping provision for filing a successive petition in order to avail himself of the recent Supreme Court ruling in Apprendi , petitioner moves under § 2241. See Harris , supra.

#### PROCEDURAL HISTORY

Petitioner was indicted in Federal Court by a grand Jury in the Eastern District of North Carolina on July 6 , 1993. On November 22 , 1993 , petitioner entered a plea of [not guilty]. The indictment charged petitioner with a Ninety Eight count indictment. petitioner was only charged with Eight counts. The indictment charged petitioner under Count One (1) , with a variety of offenses. After trial petitioner was found guilty on Eight (8) counts on December 3 , 1993. Sentencing was on March 8 , 1994. The Hon. Judge James C. fox , sentenced petitioner to a Life sentence under count One and Five (5) Years consecutive and Six (6) Months also consecutive. The Six Month sentence was for the contempt of court.

The court adopted the PSI Report and set the amount of the quantity of a detectable amount of a mixture of a substance containing Cocaine Base; and Cocaine , at a amount [not] specified in the Indictment return by the grand jury. Petitioner Filed his Notice of appeal , in the Fourth Circuit Appeal Court , and on August 31 , 1995 , the Fourt Circuit Appeals Court denied petitioner Appeal. Thereafter , petitioner filed a Motion under 28 U.S.C. § 2255 , which Motion was also denied in the Eastern District of North Carolina. The District as well as the Fourth Circuit also denied petitioners certificate of Appealability , to Appeal his §2255

Motion. This Motion now follows.

STANDARD OF REVIEW

Petitioner is a layman of law and therefore , his Motion should be construed Liberally , or held to less stringent standards than formal pleadings drafted by a lawyer.See Haines v. Kerner , 404 U.S. 519 (1972).

**Ground One:** IN LIGHT OF THE SUPREME COURT'S RECENT DECISION IN APPREND V. NEW JERSEY , AND JONES V. U.S. , THE PETITIONERS SENTENCE [CANNOT] EXCEED THE STATUTORY MAXIMUM FOR THE OFFENSES , WHICH CARRIED THE MOST LENIENT STATUTORY PRESCRIBED SENTENCE.

Count One 91) of the Indictment charged petitioner and others , with Title 21 U.S.C. Sections 846 and 841(a)(1). The Indictment never staed a specific quantity of drugs charged to petitioner.

The PSI Report recommended that petitioner be held accountable for Nine (9) Ounces of Cocaine Base , and Five (5) Ounces of Cocaine. (See Attached page 11 , of the PSI). The PSI Report also stated; "inasmuch as the drugs/firearams conspiracy was intertwine.

The court's jury instruction did not state a amount of drugs for the jury to determine that petitioner be held accountable for. (See Jury Instructions , pages 1217,1218,1219,1220: Attached). However , the court adopted the PSI Report and findings , and sentence petitioner on both , controlled substances ,(9) Ounces of Cocaine Base , and (5) Ounces of Cocaine , thereby imposed a Life sentence.

The petitioner states that the jury never found beyond a reasonable doubt that petitioner possessed any specific quantity of drugs , because the Indictment never alleged those elements.

The petitioner also contends , that because the activity alleged in count one (1) of the indictment involved "two" different controlled substance , and the jury rendered a simple general verdict , without stating which offenses the petitioner was guilty , then his sentence of [Life] , "exceeded" the statutory maximum that could be imposed. See Apprendi v. New Jersey , 530 U.S. \_\_\_\_; 120 S.Ct 2348 ; 147 L.ED 2d 435 (2000); and Jones v. U.S. , 143 L.Ed 2d 311 (1999) , to wit;

"Under the due process clause of the Fifth Amendment and notice and jury guarantees of the Sixth Amendment , any facts (other than prior conviction) that increases the maximum penalty for a crime must be charged in an indictment , submitted to a jury , and proven beyond a reasonable doubt. id Jones , at n.6 (emphasis added).

Also See Edwards v. United States , 140 L.Ed 703 (1998). The court in Edwards , held , a conspiracy to possess different controlled substances is alleged in a single count of an indictment , the applicable mandatory minimum sentence depends on which controlled substance the petitioner was guilty of conspiring to possess , a general verdict of guilty only [authorizes] the lowest mandatory minimum. Also See U.S. v. Barret , 870 F.2d 953 (3rd cir 1989).

Since petitioners indictment does not specify the amount of drugs allegedly involved, he must be sentenced to a punishment within the lowest statutory range. See Apprendi , supra. Wherefore , petitioner is "Actually Innocent" of the sentence imposed , his sentence thereunder must be vacated.

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**GROUND TWO: THE COURT WAS WITHOUT SUBJECT MATTER JURISDICTION TO ENTERTAIN THE INDICTMENT AGAINST PETITIONER , WHERE THE AUSA , UNCONSTITUTIONAL AMENDED THE INDICTMENT**

---

Following a Wiretap investigation of drugs and weapons dealing , this case was presented to the grand jury. The targets of the investigation were identified and indicted. A phone conversation was present , that the name of an unknown person was heard over the wiretap. No evidence was presented identifying the name and therefore , when the contents of the intercepted conversation was presented , the person

was designated as "John Doe." During the course of the execution of a warrant on September 23rd 1993 , petitioner was arrested and a theory was developed by the arresting officers , that petitioner was "John Doe." The case was never re-represented to the grand jury for a superseding indictment in order for the grand jury to rule or indict petitioner as "John Doe," the grand jury had to be made aware of petitioners identity.

The rub was that the grand jury indicted one defendant as "John Doe." There was not scintilla of evidence before the grand jury , that petitioner was the one intended to be "John Doe." And petitioner further contends that the A.U.S. Attorney (Mrs. Hamilton) , amended the indictment when she put petitioner name (Allen Morsley) beside "John Doe." In fact during petitioners trial , the A.U.S. Attorney (Mrs. Hamilton) stated that she asked Agents Fannely and Moss to bring the government witness (Flectcher Johnson) , who never testified before the grand jury concerning petitioners , Name,Height, Weight or even Race , to the Raleigh Police Department on 9/23/93 , to make sure that they had the right person , even after the grand jury had handed down the indictment almost three Months earlier, 7/6/93.(Also see September 27,1993 , Transcripts of Detention Hearing pages 1-16).

Yet at trial , the A.U.S. Attorney Mrs.Hamilton , guaranteed that Agent Fannely and Moss knew who they had arrested. But in open court , under Oath , both Agents Fannely and Moss testified that they had [no] personal knowledge who "John Doe," or a/k/a Baldhead , a/k/a Roy Lee , a/k/a Raleighs identity was , stating clearly to the Magistrate Judge Alexander B.Denson , as well as the trial Judge Mr. Fox , that they were acting off a tip from a informant who they never used before , when they were excuting a warrant on 9/23/93 , for petitioners arrest and detain to stand trial. It is evident that this informant was [unreliable] , because they never used him before , nor did they show his testimony was credible. While addressing

petitioners objections to the government and court to Amend the indictment , the trial judge , overrule petitioners objections stating; "that the grand jury indicted somebody and , it was a question for the petit jury to decide who that person was." ( See Exhibits A-1,A-2,A-3). It is quite evident that the grand jury never knew "John Doe" , a/k/a Baldhead , a/k/a Ra-Leek , identity.

Most importantly , when the jury was being charged in the court's instructions , the court instructed them [without] petitioner being charged as "John Doe" as the indictment stated from the grand jury , but instead the court amended the indictment in used the name; Allen Morsley , a/k/a Baldhead , a/k/a Ra-Leek. ( See Attached pages of the court instructions at 1211,1212,1213).

Petitioner contends that the AUSA Attorney and the court unconstitutional Amendment the indictment in violation of his Sixth Amendment Right.

#### THE LAW

Jurisdiction defects , by contrast cannot be procedurally defaulted. As Federal Courts are courts of limited Jurisdiction , deriving powers solely from Article III of the constitution and from the Legislative Acts of Congress. See Insurance Corp.Of IR , Itd v. Compagnied Bauxites De Guinee , 456 U.S. 694 (1982).

Furthermore courts are bound to assure themselves of Jurisdiction even if the parties fail to raise the issue. See Insurance Corp.IR, Itd , 456 U.S. 702 , "A court not only has the power but also the obligation at anytime to inquire into Jurisdiction whenever the possibility that jurisdiction does not exist arises , citing Philbrook v. Glodgett , 421 U.S. 707 (1975); and United States v. Foley , 73 F.3d 484 (2nd cir 1996).

Petitioner contends , that since his Indictment was not resubmitted to the Grand Jury in order for them to know his identity , the court cannot create its own jurisdiction. To make such a ruling violated petitioners Fifth Amendment Constitutional Right. See Russell v. United States , 369 U.S. 749 (1962). "An indictment may not be amended except by resubmitted to the grand jury , unless the change is merely of form." If it be once held that changes can be made by the consent or the order of the court in the body of the indictment as presented by the grand jury , and the prisoner can be called upon to answer to the indictment as thus charged , the restriction which the constitution placed upon the power of the court , in regard to the prerequisite of an indictment , in reality , no longer exists.id.

Petitioner could not be convicted under an indictment against an individual named "John Doe," where petitioner's name did not appear in the indictment , and there was a reasonable doubt as to whether the petitioner was "John Doe."

In a similar case , United States v. Jay , 713 F.Supp 377 (N.D.Ala 1988) , the indictment charged,"Jay" (being a black male approximately 20 to 30 Years of age , whose identity is otherwise unknown to the grand jury). Gerald Wayne Daniel was brought to trial and convicted. In setting aside the conviction and dismissing the indictment , the court wrote:

"Frankly , this court , including its magistrates , were asleep at the switch when they allowed this case to proceed to trial against Gerald Wayne Daniel when he never was named in the indictment."

Herein this case , it was the grand jury , [not the court] , to decide whether petitioner was the "John Doe" named in the indictment. Without such grand jury presentment , the court was without subject matter jurisdiction to amend or try the indictment. All the government had to do was to present the issue of identification to the grand jury , for a superseding indictment. To allow such shorthand proceeding would be to authorize the grand jury to issue a series of "John Doe" indictments

to the government , to be used to prosecute [whomever].

CONCLUSION

Wherefore , the judgment of convictions should be Vacated and the Indictment dismissed and a full hearing ordered on the Issues herein presented.

May 28, 2007

Respectfully Submitted ,

Allen Morsley

Allen Morsley #14718-056

P.O. Box 1000

Lewisburg , Pa. 17837

FILED

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
RALEIGH DIVISION

JUL 6 '93

DAVID W. DANIEL, CLE  
U.S. DISTRICT COUR  
E. DIST. NC. CAR.

NO. 93-102-01-CR-5-F  
NO. 93-102-02-CR-5-F  
NO. 93-102-03-CR-5-F  
NO. 93-102-04-CR-5-F  
NO. 93-102-05-CR-5-F  
NO. 93-102-06-CR-5-F  
NO. 93-102-07-CR-5-F  
NO. 93-102-08-CR-5-F  
NO. 93-102-09-CR-5-F

UNITED STATES OF AMERICA

v.

INDICTMENT

CLYDE ANDRE HENDRICKS  
MELVIN ADAMS  
ANTHONY B. HOLLEY  
STANLEY LEACH  
LENTON EARL JORDAN  
FLETCHER JOHNSON  
JOHN DOE,  
a/k/a Raleek,  
a/k/a Baldhead  
TUVAL MCKOY  
LORI ANNE PERRY HENDRICKS

The Grand Jury charges that:

COUNT 1

Beginning in or about January 1992, the exact date being unknown, and continuing up to and including June 17, 1993, within the Eastern District of North Carolina and elsewhere, CLYDE ANDRE HENDRICKS, MELVIN ADAMS, ANTHONY B. HOLLEY, STANLEY LEACH, LENTON EARL JORDAN, FLETCHER JOHNSON, JOHN DOE, a/k/a Raleek, a/k/a Baldhead, TUVAL MCKOY and LORI ANNE PERRY HENDRICKS, the defendants herein, did unlawfully, knowingly and intentionally combine, conspire, confederate and agree together with others known and

4-6 A3  
4-6 A3  
4-6 A3  
4-6 A3

unknown to the grand jury, to commit the following offenses against the United States:

1. To knowingly, intentionally and unlawfully possess with intent to distribute a quantity of a mixture and substance containing a detectable amount of cocaine base, a Schedule II narcotic controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).
2. To knowingly, intentionally and unlawfully distribute a quantity and mixture of a substance containing a detectable amount of cocaine base, a Schedule II narcotic controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).
3. To knowingly, intentionally and unlawfully possess with intent to distribute a quantity of a mixture and substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).
4. To knowingly, intentionally and unlawfully distribute a quantity of a mixture and substance containing a detectable amount of cocaine, a Schedule II narcotic controlled substance, in violation of Title 21, United States Code, Section 841(a)(1).

WAYS, MANNER AND MEANS TO ACCOMPLISH THE CONSPIRACY

The primary purpose of the conspiracy was to make as much money as possible through the distribution of cocaine, cocaine base and firearms, in the Eastern District of North Carolina. In order to accomplish the goals of the conspiracy the co-conspirators did commit and aid and abet in the commission of the following violations:

JOHN DOE  
Page 11

is applied. In this instance, the applicable guideline for Count 1 is 2D1.1, the applicable guideline for Counts 18, 37, and 44 is 2F1.1, and the applicable guideline for Counts 80, 81, and 95 is 2K2.1. 2D1.1 results in the highest offense level and as a result, will be utilized for purposes of guideline calculations.

Counts 1, 18, 37, 44, 80, 81, and 95:

- |  |           |
|--|-----------|
| 28. <b>Base Offense Level:</b> The United States Sentencing Commission Guideline for violation of 21 USC § 846 is found in 2D1.1. Investigation revealed the defendant was responsible for the sale of 5 ounces of cocaine and 9 ounces of cocaine base. Conversion of these substances to their marijuana equivalency results in a total quantity of controlled substances of 5,135.35 kilograms of marijuana, which provides a base offense level of 34.   | <u>34</u> |
| 29. <b>Specific Offense Characteristics:</b> Although firearms were used in conjunction with the instant offense, the defendant has been convicted of Using a Firearm During a Drug Trafficking Offense, which requires a 5 year consecutive sentence to any other sentence imposed by the Court. Pursuant to 2K2.4, Application Note 2, where a sentence under this section is imposed in conjunction with a sentence for an underlying offense, any specific characteristic for possession of a firearm is not to be applied in respect to the guideline for the underlying offense. Therefore, no enhancement is warranted. | <u>0</u>  |
| 30. <b>Victim-Related Adjustments:</b> None.   | <u>0</u>  |
| 31. <b>Adjustments for Role in the Offense:</b> None.  | <u>0</u>  |
| 32. <b>Adjustment for Obstruction of Justice:</b> During court proceedings the defendant provided his name as Allen Morsley to the court. Investigation uncovered his true name to be Allen Mosley. Overall, the information he has provided has been incomplete and misleading which resulted in significant hinderance to the investigative process. Pursuant to 3C1.1, 2 levels are added.  | <u>+2</u> |
| 33. <b>Adjusted Offense Level (Subtotal):</b>  | <u>36</u> |
| 34. <b>Chapter Four Enhancements:</b> As is shown in Part B (Criminal History), the defendant has been convicted of two violent felony offenses. Since the instant offense involves a controlled substance and the defendant was 18 years or older at the time of its commission, the defendant is a career offender within the meaning of 4B1.1 of the guidelines. The offense level determined under 4B1.1 is 37 rather than the lower level calculated above.   | <u>37</u> |

1 AS TO EACH COUNT, BEFORE A DEFENDANT MAY BE FOUND  
2 GUILTY OF A CRIME, THE GOVERNMENT MUST ESTABLISH BEYOND A  
3 REASONABLE DOUBT THAT UNDER THE STATUTES DESCRIBED IN THESE  
4 INSTRUCTIONS, THAT DEFENDANT WAS FORBIDDEN TO DO THE ACT  
5 CHARGED IN THE INDICTMENT, AND THAT HE INTENTIONALLY COMMITTED  
6 THE ACT.

7 AS STATED BEFORE, THE LAW NEVER IMPOSES UPON A  
8 DEFENDANT IN A CRIMINAL CASE THE BURDEN OR DUTY OF CALLING ANY  
9 WITNESSES OR PRODUCING ANY EVIDENCE.

10 YOU WILL NOTE THE INDICTMENT CHARGES IN EACH COUNT  
11 THAT THE OFFENSE WAS COMMITTED "ON OR ABOUT" OR "IN OR ABOUT"  
12 A CERTAIN DATE. THE PROOF NEED NOT ESTABLISH WITH CERTAINTY  
13 THE EXACT DATE OF THE ALLEGED OFFENSE. IT IS SUFFICIENT IF  
14 THE EVIDENCE IN THE CASE ESTABLISHES BEYOND A REASONABLE DOUBT  
15 THAT THE OFFENSE WAS COMMITTED ON A DATE REASONABLY NEAR THE  
16 DATE ALLEGED.

17 THE INDICTMENT CHARGES EACH OF THE DEFENDANTS WITH  
18 CONSPIRACY TO VIOLATE TITLE 21 UNITED STATES CODE SECTION  
19 841(A)(1) BY POSSESSING WITH THE INTENT TO DISTRIBUTE, AND  
20 DISTRIBUTING, COCAINE POWDER AND COCAINE BASE OR "CRACK."  
21 TITLE 21 UNITED STATES CODE SECTION 846 MAKES IT A SEPARATE  
22 FEDERAL CRIME FOR ANYONE TO CONSPIRE OR AGREE WITH SOMEONE  
23 ELSE TO DO SOMETHING WHICH, IF ACTUALLY CARRIED OUT, WOULD BE  
24 A VIOLATION OF SECTION 841(A)(1). SECTION 841(A)(1) MAKES IT  
25 A CRIME FOR ANYONE TO KNOWINGLY POSSESS COCAINE OR COCAINE

1 BASE WITH THE INTENT TO DISTRIBUTE IT, AND TO DISTRIBUTE  
 2 COCAINE OR COCAINE BASE.

3 UNDER THE LAW, A "CONSPIRACY" IS A KIND OF AGREEMENT  
 4 OR A KIND OF "PARTNERSHIP IN CRIMINAL PURPOSE" IN WHICH EACH  
 5 MEMBER BECOMES THE AGENT OR PARTNER OF EVERY OTHER MEMBER.

6 IN ORDER TO ESTABLISH A CONSPIRACY OFFENSE, IT IS  
 7 NOT NECESSARY FOR THE GOVERNMENT TO PROVE THAT ALL OF THE  
 8 PEOPLE NAMED IN THE INDICTMENT WERE MEMBERS OF THE SCHEME, OR  
 9 THAT THOSE WHO WERE MEMBERS HAD ENTERED INTO ANY EXPRESS  
 10 FORMAL TYPE OF AGREEMENT; OR THAT THEY DIRECTLY STATED AMONG  
 11 THEMSELVES THE DETAILS OF THE SCHEME AND ITS OBJECT OR  
 12 PURPOSE, OR THE PRECISE MEANS BY WHICH THE OBJECT OR PURPOSE  
 13 WAS TO BE ACCOMPLISHED. ALSO, BECAUSE THE ESSENCE OF A  
 14 CONSPIRACY OFFENSE IS THE MAKING OF THE SCHEME ITSELF, IT IS  
 15 NOT NECESSARY FOR THE GOVERNMENT TO PROVE THAT THE  
 16 CONSPIRATORS ACTUALLY SUCCEEDED IN ACCOMPLISHING THEIR  
 17 UNLAWFUL PLAN.

18 NOW, MEMBERS OF THE JURY, WITH REGARD TO EACH  
 19 INDIVIDUAL DEFENDANT, MELVIN ADAMS, ALLEN MORSLEY, ALSO KNOWN  
 20 AS RALEEK, ALSO KNOWN AS BALDHEAD, AND TUVAL MCKOY, THE  
 21 GOVERNMENT MUST PROVE EACH OF THE FOLLOWING ELEMENTS OF  
 22 CONSPIRACY TO YOU BEYOND A REASONABLE DOUBT:

23 FIRST: THAT TWO OR MORE PERSONS IN SOME WAY OR  
 24 MANNER, CAME TO A MUTUAL UNDERSTANDING TO TRY TO ACCOMPLISH  
 25 THE COMMON AND UNLAWFUL PLAN CHARGED IN THE INDICTMENT; AND

1 MENTIONED CONCERNING YOUR ASSESSMENT OF THE CREDIBILITY OF ANY  
2 WITNESS IN GENERAL, AND SHOULD ALSO CONSIDER, IN PARTICULAR,  
3 WHETHER THE WITNESS HAD AN ADEQUATE OPPORTUNITY TO OBSERVE THE  
4 PERSON IN QUESTION AT THE TIME OR TIMES ABOUT WHICH THE  
5 WITNESS TESTIFIED. YOU MAY CONSIDER, IN THAT REGARD, SUCH  
6 MATTERS AS THE LENGTH OF TIME THE WITNESS HAD TO OBSERVE THE  
7 PERSON IN QUESTION, THE PREVAILING CONDITIONS AT THAT TIME IN  
8 TERMS OF VISIBILITY OR DISTANCE AND THE LIKE, AND WHETHER THE  
9 WITNESS HAD KNOWN OR OBSERVED THE PERSON AT AN EARLIER TIME.

10 YOU MAY ALSO CONSIDER THE CIRCUMSTANCES SURROUNDING  
11 THE IDENTIFICATION ITSELF INCLUDING, FOR EXAMPLE, THE MANNER  
12 IN WHICH A DEFENDANT WAS PRESENTED TO THE WITNESS FOR  
13 IDENTIFICATION, AND THE LENGTH OF TIME THAT ELAPSED BETWEEN  
14 THE INCIDENT IN QUESTION AND THE NEXT OPPORTUNITY THE WITNESS  
15 HAD TO OBSERVE THE DEFENDANT.

16 IF, AFTER EXAMINING ALL OF THE TESTIMONY AND  
17 EVIDENCE IN THE CASE, YOU HAVE A REASONABLE DOUBT AS TO THE  
18 IDENTIFY OF A DEFENDANT AS THE PERPETRATOR OF THE OFFENSES  
19 WITH WHICH HE IS CHARGED, YOU MUST FIND THAT DEFENDANT NOT  
20 GUILTY.

21 YOU HAVE HEARD EVIDENCE THAT A DEFENDANT  
22 SUBSEQUENTLY COMMITTED AN ACT SIMILAR TO THOSE CHARGED IN THIS  
23 CASE. YOU MAY NOT USE THIS EVIDENCE TO DECIDE WHETHER THE  
24 DEFENDANT, ALLEN MORSLEY, ALSO KNOWN AS RALEEK, ALSO KNOWN AS  
25 BALDHEAD, CARRIED OUT THE ACTS INVOLVED IN THE CRIMES CHARGED

1 HERE. HOWEVER, IF YOU ARE CONVINCED BEYOND A REASONABLE  
2 DOUBT, BASED ON OTHER EVIDENCE INTRODUCED, THAT HE DID CARRY  
3 OUT THE ACTS INVOLVED IN THE CRIMES CHARGED HERE, THEN YOU MAY  
4 USE THIS EVIDENCE CONCERNING A SUBSEQUENT ACT TO DECIDE  
5 WHETHER HE POSSESSED THE INTENT TO COMMIT THE OFFENSES CHARGED  
6 IN THE INDICTMENT.

7 REMEMBER, EVEN IF YOU FIND THAT THE DEFENDANT MAY  
8 HAVE COMMITTED A SIMILAR ACT, THIS IS NOT EVIDENCE THAT HE  
9 COMMITTED SUCH AN ACT IN THIS CASE. YOU MAY NOT CONVICT A  
10 PERSON SIMPLY BECAUSE YOU BELIEVE HE MAY HAVE SUBSEQUENTLY  
11 COMMITTED SIMILAR ACTS. THE DEFENDANT IS ON TRIAL ONLY FOR  
12 THE CRIMES CHARGED, AND YOU MAY CONSIDER THE EVIDENCE OF  
13 SUBSEQUENT ACTS ONLY ON THE ISSUE OF INTENT, KNOWLEDGE, OR  
14 MOTIVE.

15 DURING THE COURSE OF THE TRIAL, AS YOU KNOW FROM THE  
16 INSTRUCTION I GAVE YOU AT THE TIME, TESTIMONY OR EVIDENCE WAS  
17 RECEIVED WITH RESPECT TO ALLEN MORSLEY, ALSO KNOWN AS RALEEK,  
18 ALSO KNOWN AS BALDHEAD, ALLEGEDLY BEING IN POSSESSION OF  
19 COCAINE ON SEPTEMBER 23, 1993, AT THE KIDD STREET HOUSE. HE  
20 IS NOT CHARGED IN THE INDICTMENT FOR ANY OFFENSE RELATING TO  
21 THOSE DRUGS OR EVENTS OCCURRING ON THAT DATE. THE TESTIMONY  
22 REGARDING THE EVENTS ON SEPTEMBER 23, IN WHICH ALLEN MORSLEY,  
23 ALSO KNOWN AS RALEEK, ALSO KNOWN AS BALDHEAD, POSSESSED  
24 COCAINE, AT MOST, CONSTITUTES EVIDENCE OF "SIMILAR ACTS" IN  
25 RELATION TO THOSE ALLEGED IN THE INDICTMENT.

1 EVIDENCE THAT AN ACT WAS DONE AT ONE TIME, OR ON ONE  
 2 OCCASION, IS NOT ANY EVIDENCE OR PROOF WHATEVER THAT A SIMILAR  
 3 ACT WAS DONE AT ANOTHER TIME, OR ON ANOTHER OCCASION. THAT IS  
 4 TO SAY, EVIDENCE THAT A DEFENDANT MAY HAVE COMMITTED AN ACT  
 5 SIMILAR TO THE ACTS ALLEGED IN THE INDICTMENT MAY NOT BE  
 6 CONSIDERED BY THE JURY IN DETERMINING WHETHER HE IN FACT  
 7 COMMITTED ANY ACT CHARGED IN THE INDICTMENT.

8 NOR MAY EVIDENCE OF SOME OTHER ACT OF A LIKE NATURE  
 9 BE CONSIDERED FOR ANY PURPOSE WHATEVER, UNLESS THE JURY FIRST  
 10 FINDS THAT THE OTHER EVIDENCE IN THE CASE, STANDING ALONE,  
 11 ESTABLISHES BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DID  
 12 THE PARTICULAR ACT CHARGED IN THE PARTICULAR COUNT OF THE  
 13 INDICTMENT THEN UNDER DELIBERATION.

14 IF THE JURY SHOULD FIND BEYOND A REASONABLE DOUBT  
 15 FROM OTHER EVIDENCE IN THE CASE THAT THE DEFENDANT, ALLEN  
 16 MORSLEY, ALSO KNOWN AS RALEEK, ALSO KNOWN AS BALDHEAD, DID THE  
 17 ACT CHARGED IN THE PARTICULAR COUNT UNDER DELIBERATION, THEN  
 18 YOU MAY CONSIDER EVIDENCE AS TO AN ALLEGED ACT OF A LIKE  
 19 NATURE, IN DETERMINING THE STATE OF MIND OR INTENT WITH WHICH  
 20 HE DID THE ACT CHARGED IN THE PARTICULAR COUNT. AND WHERE  
 21 PROOF OF AN ALLEGED ACT OF A LIKE NATURE IS ESTABLISHED BY  
 22 EVIDENCE WHICH IS CLEAR AND CONCLUSIVE, THE JURY MAY, BUT IS  
 23 NOT OBLIGED, TO DRAW THE INFERENCE AND FIND THAT, IN DOING THE  
 24 ACT CHARGED IN THE PARTICULAR COUNT UNDER DELIBERATION, THE  
 25 DEFENDANT ACTED WILLFULLY, AND NOT BECAUSE OF MISTAKE OR

THE UNITED STATES DISTRICT COURT NOV 18 '93  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA  
WILMINGTON DIVISION

DANIEL, CLERK  
DISTRICT COURT  
N.C., U.S.A.

UNITED STATES OF AMERICA, )  
PLAINTIFF, )  
vs. ) No. 93-102-07-CR-5-F  
JOHN DOE, ) September 27, 1993  
DEFENDANT. ) Raleigh, NC

TRANSCRIPT OF DETENTION HEARING

BEFORE THE HONORABLE ALEXANDER B. DENSON  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

FOR THE PLAINTIFF: CHRIS HAMILTON  
ASSISTANT UNITED STATES ATTORNEY  
310 NEW BERN AVENUE, SUITE 800  
RALEIGH, NC 27611

FOR THE DEFENDANT: BRIDGETT BRITT AGUIRRE, ESQUIRE  
101 HAMPTON SQUARE  
FUQUAY-VARINA, NC 27526

FILED

FEB 18 1993

U.S. Court of Appeals  
Fourth Circuit

ORIGINAL

T A B L E   O F   C O N T E N T S

	<u>PAGE</u>
<u>EXAMINATION</u>	
<u>AGENT MICHAEL J. FANELLY</u>	
BY MS. HAMILTON	DIRECT
BY MS. BRITT AGUIRRE	CROSS
	5 7
<u>ADJOURNMENT</u>	15
<u>REPORTER'S CERTIFICATE</u>	16

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PROCEEDINGS

2 (REPORTER'S NOTE: THE FOLLOWING TRANSMISSIONS ARE UNEDITED)

3 BEEN PREPARED FROM A TAPE PROVIDED BY THE CLERK'S

4 THE COURT: GOOD AFTERNOON. P

5 SEATED AND COME TO ORDER. COURT'S IN SESSION.

6 MS. HAMILTON: GOOD AFTERNOON, YO

7 THE COURT: WE HAVE A DETENTION

AT THIS TIME IN THE CASE OF THE UNITED STATES VER

9 DOE, THE COURT'S FILE 93-102-07-CRIMINAL-5-F. THE

O WILL SHOW THAT THE GOVERNMENT IS REPRESENTED BY A

U. S. ATTORNEY CHRIS HAMILTON. THE DEFENDANT IS

2 AND REPRESENTED BY MS. BRIDGETT BRITT AGUIRRE.

3 I'LL HEAR FROM THE GOVERNMENT NOW, MS.

4 MS. HAMILTON: YOUR HONOR, THE GOV

CONTINUES TO SEEK DETENTION IN THIS CASE, AND WOULD

THE COURT PURSUANT TO TITLE 18, SECTION 3142(3),

DEFENDANT SHALL BE PRESUMED THAT NO CONDITION OR

COMBINATION OF CONDITIONS COULD ALLOW HIM TO BE RE

SUBJECT, OF COURSE, TO REBUTTAL.

THERE HAS BEEN ABSOLUTELY NOTHING PUT IN THE PAPER.

HE'S REFUSED TO PROVIDE ANY INFORMATION TO PRE-TRI

SERVICES, AND I WOULD MAINTAIN THAT THE DEFENDANT

FAILED TO MEET ANY REBUTTAL OF PRESUMPTION AND WE

THE COURT DETAIN HIM PURSUANT TO THAT SECTION AND

TESTIMONY IN THIS REGARD WOULD BE UNNECESSARY.

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4

1 THE COURT: MS. BRITT AGUIRRE, THE  
2 GOVERNMENT HAS TAKEN THE POSITION THAT THE BURDEN IS ON THE  
3 DEFENDANT SINCE THE REBUTTABLE PRESUMPTION HAS ARISEN BY  
4 WAY OF THE CHARGES IN THIS CASE. WHAT DOES DEFENDANT SAY?

5 MS. BRITT AGUIRRE: YOUR HONOR, I WOULD NORMALLY  
6 AGREE WITH THAT IF THERE WAS NO EVIDENCE AND IF WE HAD THE  
7 IDENTITY OF THE DEFENDANT. HOWEVER, IN THIS CASE, I THINK  
8 THAT IT IS THE GOVERNMENT'S POSITION, FIRST, TO PROVE THAT  
9 THIS INDIVIDUAL IS IN FACT THE MAN NAMED AS JOHN DOE IN THE  
10 INDICTMENT, AND THAT THIS INDIVIDUAL BE SATISFACTORY UNTO  
11 YOU WHO CAN IDENTIFY THIS MAN AS THAT JOHN DOE AND AS THE  
12 MAN NAMED IN THE INDICTMENT, AND UNTIL HIS IDENTIFICATION  
13 IS ESTABLISHED, THEN WE SHOULD NOT BE ABLE TO--YOU SHOULD  
14 NOT HOLD THIS MAN.

15 THE COURT: ISN'T THAT REASONABLE, MS.  
16 HAMILTON?

17 MS. HAMILTON: YOUR HONOR, ON THE ISSUE OF  
18 IDENTITY, THE GOVERNMENT IS PREPARED TO PUT ON EVIDENCE.

19 THE COURT: VERY WELL.

20 MS. HAMILTON: JUST ONE MOMENT, YOUR HONOR.

21 (PAUSE.)

22 MS. HAMILTON: THE UNITED STATES CALLS  
23 SPECIAL AGENT MIKE FANELLY.

24 THE COURT: COME FORWARD, SIR.  
25 (WHEREUPON,

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5

1 MICHAEL J. FANELLY

2 WAS CALLED AS A WITNESS, DULY SWORN, AND TESTIFIED AS  
3 FOLLOWS: )

4 D I R E C T   E X A M I N A T I O N

5 BY MS. HAMILTON:

6 Q. AGENT FANELLY, IF YOU WOULD PLEASE, STATE YOUR  
7 FULL AND COMPLETE NAME.

8 A. MICHAEL J. FANELLY, THAT'S SPELLED  
9 F-A-N-E-L-L-Y.

10 Q. AND HOW ARE YOU EMPLOYED, AGENT FANELLY?

11 A. BY THE BUREAU OF ALCOHOL, TOBACCO AND FIREARMS.

12 Q. AND HOW LONG HAVE YOU BEEN EMPLOYED WITH THE  
13 A.T.F.

14 A. THREE YEARS.

15 Q. AND ARE YOU THE PRINCIPAL CASE AGENT IN THE CASE  
16 OF THE UNITED STATES VERSUS CLYDE ANDRE' HENDRICKS, ET AL.,  
17 AND IN PARTICULAR, JOHN DOE, A.K.A. RALEEK?

18 A. YES, MA'AM.

19 Q. DID YOU PARTICIPATE IN THE ARREST OF THE  
20 INDIVIDUAL KNOWN TO YOU AS JOHN DOE, A.K.A. RALEEK?

21 A. YES, MA'AM.

22 Q. AND WHEN DID THAT TAKE PLACE?

23 A. THURSDAY EVENING, SEPTEMBER 23RD.

24 Q. AND AFTER THE DEFENDANT WAS ARRESTED, WHERE WAS  
25 HE TAKEN?

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6

1 A. TO THE RALEIGH POLICE DEPARTMENT.

2 Q. AND AFTER HE WAS TAKEN TO THE POLICE DEPARTMENT,  
3 DID YOU HAVE HIM VIEWED BY ANYONE IN PARTICULAR?

4 A. YES, MA'AM, I DID.

5 Q. AND HOW DID YOU DO THIS?

6 A. HE WAS LEFT IN AN INTERVIEW ROOM THAT HAD A TWO-  
7 WAY MIRROR, AND WE HAD A CO-CONSPIRATOR IN THIS  
8 INVESTIGATION LOOK THROUGH THE MIRROR AND IDENTIFY HIM AS  
9 THE INDIVIDUAL JOHN DOE.

10 Q. AND WHO IDENTIFIED HIM AS JOHN DOE, A.K.A.  
11 RALEEK?

12 A. FLETCHER JOHNSON.

13 Q. AND IN ADDITION TO FLETCHER JOHNSON IDENTIFYING  
14 THE DEFENDANT AS RALEEK, HAVE ANY OF THE OTHER CO-  
15 DEFENDANTS BEEN SHOWN ANY PHOTOGRAPHS OF THIS INDIVIDUAL?

16 A. YES, MA'AM.

17 Q. AND WHO DID YOU SHOW A PHOTOGRAPH TO?

18 A. STANLEY LEACH AND ANDRE' HENDRICKS.

19 Q. AND WITH WHAT RESULT?

20 A. THEY IDENTIFIED HIM AS JOHN DOE, A.K.A. RALEEK.

21 Q. AND THAT IS THE INDIVIDUAL RALEEK THAT IS NAMED  
22 IN THE INDICTMENT AS PARTICIPATING WITH THEM IN THE  
23 CRIMINAL ENTERPRISE?

24 A. YES, MA'AM.

25 MS. HAMILTON: I HAVE NOTHING FURTHER, YOUR

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7

1 HONOR.

2 THE COURT: YOU MAY CROSS.

3 C R O S S - E X A M I N A T I O N

4 BY MS. BRITT AGUIRRE:

5 Q. NOW, YOU INDICATED HIS ARREST WAS ON SEPTEMBER  
6 23RD?

7 A. YES, MA'AM.

8 Q. AND HOW DID YOU KNOW TO ARREST THIS MAN?

9 MS. HAMILTON: OBJECTION. RELEVANCE, YOUR  
10 HONOR.

11 THE COURT: OVERRULED.

12 THE WITNESS: A CONFIDENTIAL INFORMANT  
13 INFORMED ME THAT RALEEK WAS AT THE RESIDENCE IN QUESTION.

14 BY MS. BRITT AGUIRRE:

15 Q. NOW, WAS THERE ANYONE ELSE AT THAT RESIDENCE  
16 WHEN YOU ARRIVED?

17 A. YES, MA'AM.

18 Q. OKAY. HOW MANY PEOPLE WERE THERE?

19 A. WHEN WE ACTUALLY MADE ENTRY, I BELIEVE THERE WAS  
20 PROBABLY FIVE PEOPLE.

21 Q. AND WERE THEY ALL MEN, WOMEN?

22 A. ALL MEN.

23 Q. HOW WERE YOU ABLE TO IDENTIFY THIS MAN AS YOUR  
24 JOHN DOE?

25 A. HE FIT THE DESCRIPTION WE HAD RECEIVED FROM

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8

1 ANOTHER INDIVIDUAL IN THE INVESTIGATION, AND THAT WE ALSO  
2 RECEIVED INFORMATION ON THE SCENE THAT THAT WAS THE  
3 INDIVIDUAL WE WERE LOOKING FOR.

4 Q. AND WHO ON THE SCENE INDICATED THAT THIS WAS  
5 RALEEK?

6 A. AN INDIVIDUAL THAT WAS IN THE RESIDENCE.

7 Q. DO YOU KNOW THAT INDIVIDUAL'S NAME?

8 MS. HAMILTON: OBJECTION, YOUR HONOR.

9 RELEVANCE.

10 THE COURT: OVERRULED.

11 THE WITNESS: NO, MA'AM, I DO NOT KNOW HIS  
12 NAME.

13 BY MS. BRITT AGUIRRE:

14 Q. OKAY. HAD YOU EVER RECEIVED ANY INFORMATION  
15 FROM THAT INDIVIDUAL BEFORE?

16 A. NO, I DID NOT.

17 Q. DID YOU KNOW ANYTHING ABOUT THAT INDIVIDUAL THAT  
18 WAS IN THE RESIDENCE?

19 A. PERSONALLY, NO, I DID NOT.

20 Q. WAS HE THE ONLY PERSON WHO INDICATED THAT THIS  
21 MAN WAS RALEEK?

22 A. AT THAT MOMENT, YES, MA'AM.

23 Q. SINCE THAT TIME HAVE OTHERS IN THAT RESIDENCE  
24 INDICATED THIS MAN IS RALEEK?

25 A. I HAVE NOT ASKED ANYBODY ELSE IN THAT RESIDENCE

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9

1 SINCE THAT TIME.

2 Q. NOW, AFTER YOU TOOK HIM TO THE RALEIGH POLICE  
3 DEPARTMENT, DID YOU PUT HIM IN A LINE-UP WITH OTHER MEN?

4 A. NO, MA'AM.

5 Q. SO WHEN HE WAS OBSERVED HE WAS THE ONLY PERSON  
6 IN THE ROOM?

7 A. YES, MA'AM--WELL, NO, THAT'S NOT TRUE. THERE  
8 WAS AN AGENT--OR RALEIGH POLICE OFFICER MOSS WAS IN THE  
9 ROOM.

10 Q. OKAY. YOU'RE POINTING TO SOMEONE AND---

11 A. EXCUSE ME---DETECTIVE MOSS.

12 Q. NOW, DID THE INDIVIDUAL--I BELIEVE YOU SAID HE  
13 WAS IDENTIFIED BY A PERSON BY THE NAME OF FLETCHER JOHNSON?

14 A. YES, MA'AM.

15 Q. AND MR. JOHNSON KNEW THAT HE WAS THERE TO  
16 IDENTIFY A JOHN DOE?

17 A. YES, MA'AM.

18 Q. AND THIS MAN WAS THE ONLY BLACK INDIVIDUAL IN  
19 THE ROOM?

20 A. YES, MA'AM.

21 Q. AND BLACK MALE IN THE ROOM?

22 A. YES, MA'AM.

23 Q. BEFORE YOU ARRESTED HIM, DID YOU HAVE A  
24 PHOTOGRAPH OF HIM?

25 A. BEFORE WE ARRESTED HIM? NO, MA'AM.

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10

1 Q. YOU INDICATED THAT YOU ALSO SHOWED SOME  
2 PHOTOGRAPHS OF THIS INDIVIDUAL TO MR. LEACH AND HENDRICKS;  
3 IS THAT CORRECT?

4 A. YES, MA'AM.

5 Q. NOW, WHAT KIND OF PHOTOGRAPHS DID YOU SHOW?

## 6 A. A POLAROID PHOTOGRAPH.

7 Q. WHEN WAS IT TAKEN?

8                   A.     THE NIGHT OF THE ARREST--NO, EXCUSE ME. IT WAS  
9                   THE NEXT MORNING WHEN HE WAS PUT THROUGH HIS PROCEDURES  
10                  HERE AT THE FEDERAL BUILDING, WHEN HE WAS FINGERPRINTED AND  
11                  A PHOTO WAS TAKEN AT THE TIME.

12 Q. WHEN YOU TOOK THAT PHOTO AND SHOWED IT TO MR.  
13 LEACH, DID YOU SHOW HIM ANY OTHER PHOTOGRAPHS?

14 A. NO, MA'AM, I DID NOT.

15 Q. AND WHEN YOU TOOK THIS PHOTO AND SHOWED IT TO  
16 MR. HENDRICKS, DID YOU SHOW HIM ANY OTHER PHOTOGRAPHS?

17 A. NO, I DID NOT.

18 Q. WHEN YOU WENT TO THEM THEY KNEW THAT THEY WERE  
19 TRYING TO IDENTIFY JOHN DOE?

20 A. NO, THEY DID NOT. I SHOWED THEM THE PHOTOGRAPH  
21 AND I ASKED THEM, "CAN YOU TELL ME ABOUT THE PHOTOGRAPH?"  
22 AND THEN THEY MADE A GESTURE THAT THAT WAS THE INDIVIDUAL  
23 THAT WE WERE LOOKING FOR.

24 Q. WHAT DID THEY IDENTIFY--WHO DID THEY IDENTIFY  
25 THE PICTURE AS BEING?

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1 A. AN INDIVIDUAL THAT WE KNEW AS RALEEK.

2 Q. DID ANYBODY IDENTIFY HIM IN THE PICTURE AS "BALD  
3 HEAD?"

4 A. NO, MA'AM, I DON'T BELIEVE SO.

5 Q. HAVE YOU SEEN A COPY OF THE INDICTMENT AGAINST  
6 THIS INDIVIDUAL?

7 A. YES, I HAVE.

8 Q. AND ISN'T HE ALSO REFERRED TO IN THERE IN PLACES  
9 AS "BALD HEAD," AS WELL AS "RALEEK?"

10 A. YES, MA'AM.

11 Q. WHERE DID YOU LEARN THE NAME "BALD HEAD?"

12 A. FLETCHER JOHNSON ALSO CALLED HIM "BALD HEAD" AS  
13 WELL AS RALEEK.

14 Q. DID HE CONFIRM THAT IDENTIFICATION AS BEING THE  
15 SAME PERSON WHEN HE LOOKED AT HIM THROUGH THE ROOM?

16 A. ON A PREVIOUS OCCASION, MA'AM, HE HAD TOLD US  
17 THAT "BALD HEAD" AND RALEEK WERE ONE IN THE SAME  
18 INDIVIDUAL.

19 Q. DID EITHER OF THE OTHER TWO EVER IDENTIFY HIM AS  
20 "BALD HEAD" OR BY THE NAME OF "BALD HEAD?"

21 A. MR. LEACH STATED THAT HE WAS ALSO KNOWN AS "BALD  
22 HEAD," BUT HE HAD TOLD ME THAT FLETCHER JOHNSON PRIMARILY  
23 CALLED HIM "BALD HEAD" AND HE DID NOT KNOW WHY.

24 Q. YOU WOULD THINK THAT IT WOULD BE SOMEBODY THAT  
25 WAS BALD, THOUGH, WOULDN'T YOU?

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1 A. NOT NECESSARILY, MA'AM. THEY CALL LARGE  
2 INDIVIDUALS "TINY" SOMETIMES. KIND OF LIKE A PLAY ON  
3 WORDS.

4 Q. OR OPPOSITE, MAYBE, SOMEBODY THAT HAD A LOT OF  
5 HAIR?

6 A. MAYBE.

7 Q. HAS ANYONE ELSE OTHER THAN THOSE INDIVIDUALS  
8 IDENTIFIED THIS MAN?

9 A. OTHER THAN THE FOUR INDIVIDUALS I TOLD YOU  
10 ABOUT? NO, MA'AM.

11 Q. WE'VE GOT MR. HENDRICKS, MR. LEACH AND MR.  
12 JOHNSON. IS THERE A FOURTH?

13 A. YES, MA'AM. AN INDIVIDUAL IN THE RESIDENCE WHEN  
14 WE WERE THERE, HE TOLD US. WE DIDN'T ASK HIM WHO THIS  
15 INDIVIDUAL WAS. HE VOLUNTEERED THE INFORMATION TO US.

16 Q. ANYONE ELSE IN THE INDICTMENT, ANYONE WHO  
17 IDENTIFIED THIS GENTLEMAN AS RALEEK?

18 A. NOT THAT I'M AWARE OF.

19 Q. WERE THERE EVER ANY CONTROLLED SALES AS A PART  
20 OF THIS INDICTMENT?

21 MS. HAMILTON: YOUR HONOR, I'M GOING TO  
22 OBJECT. NOW I THINK WE'RE GETTING INTO DISCOVERY. THE  
23 ISSUE BEFORE THE COURT IS ONE OF IDENTITY. WE'VE  
24 ESTABLISHED PROBABLE CAUSE IN THE CASE AND THERE'S BEEN NO  
25 TESTIMONY ON ANYTHING ON DIRECT OTHER THAN IDENTITY. WE'RE

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1 CLEARLY BEYOND THE SCOPE OF THE DIRECT AND WE'RE BEYOND THE  
2 ISSUE OF IDENTITY.

3 THE COURT: MS. BRITT AGUIRRE?

4 MS. BRITT AGUIRRE: YOUR HONOR, THE CONTROLLED  
5 SALE WOULD INDICATE IF THERE WAS AN AGENT WHO HAD THE  
6 OPPORTUNITY TO OBSERVE THIS INDIVIDUAL PURCHASING AN ITEM  
7 OR ITEMS FROM ANY OF THE PEOPLE NAMED IN THE CONSPIRACY.  
8 AND I THINK THAT WOULD HELP TO CLEAR UP, IF IN FACT THIS IS  
9 THE SAME PERSON THAT WAS INVOLVED IN THAT TRANSACTION.

10 THE COURT: OBJECTION OVERRULED. YOU  
11 MAY ANSWER.

12 THE WITNESS: COULD YOU REPEAT THE  
13 QUESTION, PLEASE?

14 BY MS. BRITT AGUIRRE:

15 Q. WERE THERE ANY CONTROLLED PURCHASES OF EITHER  
16 FIREARMS OR ANY TYPE OF A NARCOTIC SUBSTANCE THAT IS THE  
17 BASIS FOR THIS INDICTMENT?

18 THE COURT: WELL, AS AGAINST THE  
19 INDIVIDUAL KNOWN AS RALEEK.

20 BY MS. BRITT AGUIRRE:

21 Q. KNOWN AS RALEEK?

22 A. NO, MA'AM, THERE WAS NOT.

23 MS. BRITT AGUIRRE: I HAVE NO FURTHER QUESTIONS,  
24 YOUR HONOR.

25 THE COURT: REDIRECT.

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1 MS. HAMILTON: I HAVE NOTHING FURTHER, YOUR  
2 HONOR.

3 THE COURT: YOU MAY STEP DOWN.

4 ANYTHING FURTHER FOR THE GOVERNMENT?

5 MS. HAMILTON: NO, YOUR HONOR.

6 THE COURT: ANYTHING FOR THE DEFENDANT?

7 MS. BRITT AGUIRRE: NO, YOUR HONOR.

8 THE COURT: VERY WELL.

9 THE COURT FINDS THE IDENTITY ISSUE TO BE  
10 ESTABLISHED TO THE COURT'S SATISFACTION THAT THE PERSON  
11 NAMED AND THE PERSON PRESENT IN THE COURT IS IN FACT THE  
12 INDIVIDUAL WHO IS CHARGED IN THE INDICTMENT.

13 THE COURT ALSO FINDS FROM THE CHARGES IN THE  
14 INDICTMENT THAT THE REBUTTABLE PRESUMPTION OF DETENTION  
15 ARISES. UNLESS THE DEFENDANT HAS SOMETHING TO OFFER, I  
16 WILL AUTOMATICALLY ORDER HIM DETAINED.

17 MS. BRITT AGUIRRE: YOUR HONOR, AT THIS TIME I  
18 DO WANT TO ESTABLISH HIS NAME.

19 THE COURT: VERY WELL.

20 MS. BRITT AGUIRRE: HIS NAME IS AMNI, A-M-N-I,  
21 CONAO, C-O-N-A-O.

22 MS. HAMILTON: YOUR HONOR, AT THIS TIME I  
23 WOULD OPPOSE PUTTING THAT NAME IN AS THE NAME ATTRIBUTABLE  
24 TO THE DEFENDANT IN THE INDICTMENT. HE'S PROVIDED THAT  
25 NAME TO VARIOUS MEMBERS OF THE LAW ENFORCEMENT COMMUNITY

No. 93-102-07-CR-5-F

15

1           OVER THE PAST SEVERAL DAYS, EACH TIME WITH A DIFFERENT  
2           SPELLING. HE'S PROVIDED NO AUTHENTICATION IN TERMS OF A  
3           DRIVER'S LICENSE, A BIRTH CERTIFICATE, ANYTHING THAT WOULD  
4           SUBSTANTIATE THAT THAT IS IN FACT WHAT HIS REAL NAME IS.

5           THE COURT:                   THE GOVERNMENT CONTROLS THE  
6           NAMES WHICH YOU LIST IN THE INDICTMENT, MS. HAMILTON. IF  
7           YOU DON'T WANT TO MOVE TO AMEND THE INDICTMENT TO CHANGE  
8           THE NAME, THEN IT WON'T BE DONE.

9           MS. HAMILTON:               I DO NOT MOVE.

10          THE COURT:                  ALL RIGHT.

11          DOES THE DEFENDANT WISH TO OFFER ANYTHING ELSE?

12          MS. BRITT AGUIRRE: JUST ONE MOMENT, YOUR HONOR.

13          (PAUSE.)

14          MS. BRITT AGUIRRE: NOTHING FURTHER AT THIS  
15          TIME, YOUR HONOR.

16          THE COURT:                  VERY WELL. I ORDER THE  
17          DEFENDANT DETAINED PENDING TRIAL. THAT CONCLUDES THIS  
18          DETENTION HEARING.

19          (END OF TAPE.)

20          (END OF TRANSCRIPT.)

21

22

23

24

25

No. 93-102-07-CR-5-F

16

STATE OF NORTH CAROLINA

COUNTY OF WAKE

CERTIFICATE

I, CAROL W. WILLIAMS, CERTIFIED VERBATIM REPORTER, COURT REPORTER AND NOTARY PUBLIC FOR THE STATE OF NORTH CAROLINA, COUNTY OF WAKE, HEREBY CERTIFY THAT THE FOREGOING PAGES REPRESENT THE ENTIRE RECORD OF THE TAPE RECORDED DETENTION HEARING BEFORE THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF NORTH CAROLINA, THE HONORABLE ALEXANDER B. DENSON PRESIDING, IN THE MATTER OF THE UNITED STATES OF AMERICA VERSUS JOHN DOE, AND THESE PAGES CONSTITUTE THE ORIGINAL TRANSCRIPT OF THE PROCEEDING.

IN WITNESS WHEREOF, I HAVE HEREUNTO AFFIXED MY HAND THIS 17TH DAY OF NOVEMBER, 1993.

Carol Williams

CAROL W. WILLIAMS  
CERTIFIED VERBATIM REPORTER  
NOTARY PUBLIC, STATE OF  
NORTH CAROLINA

MY COMMISSION EXPIRES: JUNE 7, 1994

[EXHIBIT A-1]]

2

1                   PROCEEDINGS

9:25 A.M.

2                   (DEFENDANT PRESENT.)

3                   (THE FOLLOWING TRANSPRIRED DURING CALENDAR CALL.)

4                   THE COURT: JOHN RALEEK.

5                   MR. COOPER: YOUR HONOR, MY NAME'S ROBERT COOPER. I  
6                   REPRESENT AMNI CANOA, WHO THE GOVERNMENT ALLEGES IS JOHN DOE,  
7                   A/K/A RALEEK, AND HE DENIES IDENTIFICATION.

8                   THE COURT: ALL RIGHT, SIR.

9                   MR. COOPER: HE IS PRESENT IN THE COURTROOM.

10                  THE COURT: WHAT DO YOU SAY THE DEFENDANT'S NAME IS?

11                  MR. COOPER: AMNI CANOA.

12                  THE COURT: IF YOU'LL WRITE THAT DOWN FOR ME, PLEASE,  
13                  AND HAND IT TO THE CLERK, SO I'LL BE ABLE TO UNDERSTAND --  
14                  CORRECT HIS NAME.

15                  I HAVE -- MR. COOPER -- IS IT MR. COOPER; IS THAT  
16                  CORRECT?

17                  MR. COOPER: YES, YOUR HONOR.

18                  THE COURT: I HAVE A MOTION TO AMEND THE INDICTMENT.  
19                  IT INDICATES THAT THE GOVERNMENT BELIEVES YOUR CLIENT'S CORRECT  
20                  NAME TO BE ALLEN MORSLEY; IS THAT CORRECT, MS. HAMILTON?

21                  MS. HAMILTON: YES, YOUR HONOR. I FILED A MOTION TO  
22                  AMEND THE INDICTMENT BASED ON THE COMPUTER CHECKS AND THE  
23                  FINGERPRINTS ANALYSIS, THAT HE'S A FUGITIVE OUT OF NEW YORK AND  
24                  WANTED ON A HOMICIDE, YOUR HONOR.

25                  THE COURT: HAVE YOU SEEN A COPY OF THE MOTION?

[[ EXHIBIT A-2 ]]

3

1 MR. COOPER: YES, YOUR HONOR; I RECEIVED THAT THIS  
2 WEEK, AND WE WOULD CONTEST THAT MOTION. WE DENY THAT HE IS  
3 ALLEN MORSLEY, EITHER.

4 THE COURT: MS. HAMILTON, LET ME SEE YOU AND MR.  
5 COOPER JUST A MOMENT.

6 (BENCH CONFERENCE ON THE RECORD.)

7 THE COURT: HE IS A CO-DEFENDANT WITH MCKOY. THAT  
8 CASE IS TO BE TRIED AND THE JURY SELECTED ON WEDNESDAY.

9 MR. COOPER: THAT IS CORRECT.

10 THE COURT: (PAUSE.) WELL, I'M GOING TO ALLOW THE  
11 MOTION TO AMEND. AND AS I SEE IT, IT WOULD BE JUST A QUESTION  
12 FOR THE JURY TO FIND WHETHER OR NOT HE IS, IN FACT, THE  
13 DEFENDANT NAMED; WOULD YOU AGREE WITH THAT?

14 MR. COOPER: WITH ALL DUE RESPECT, YOUR HONOR, I THINK  
15 THAT THAT IS AN ISSUE THAT THE GRAND JURY MUST FIND, THAT HE IS  
16 MR. MORSLEY, BEFORE WE COULD PROCEED TO TRIAL.

17 THE COURT: WELL, I DON'T KNOW ABOUT THAT.

18 MR. COOPER: I MEAN, THIS IS MORE THAN MERE MISNOMER.  
19 THIS IS, I THINK, EQUIVALENT TO, IN A CIVIL CASE, WE WOULD  
20 CONTEND, ADDING A NEW PARTY. I MEAN, WE'RE NOT CONCEDING THAT  
21 HE IS MR. MORSLEY.

22 THE COURT: WELL, I UNDERSTAND THAT, BUT THE GRAND  
23 JURY HAS INDICTED AN INDIVIDUAL, AS KNOWN TO IT, FOR -- AND  
24 FOUND THAT THERE'S PROBABLE CAUSE TO BELIEVE THAT PARTICULAR  
25 INDIVIDUAL COMMITTED WHATEVER THE CHARGED OFFENSE WAS. WHETHER

[EXHIBIT A-3]

4

1 OR NOT YOUR CLIENT IS, IN FACT, THAT INDIVIDUAL, I THINK IS A  
2 STRAIGHT FACTUAL DETERMINATION TO BE MADE BY THE JURY. IN OTHER  
3 WORDS, REGARDLESS OF THE NAME USED IN THE INDICTMENT, THEY HAVE  
4 INDICTED A PERSON. THEY HAVE FOUND THAT THERE'S PROBABLE CAUSE  
5 TO BELIEVE THAT THAT PERSON COMMITTED THE CHARGED OFFENSE.

6 THE ISSUE IS THAT -- I DON'T KNOW IF THEY HAVE TO RE-  
7 INDICT YOUR MAN. IT SEEMS TO ME THEY SIMPLY -- THE JURY JUST  
8 HAS TO MAKE A DETERMINATION WHETHER OR NOT HE IS, IN FACT --  
9 MAKE A FACTUAL DETERMINATION AS TO WHETHER OR NOT HE IS THE MAN  
10 WHO IS CHARGED AND COMMITTED THE CRIME.

11 MR. COOPER: YOUR HONOR, THE BASIS FOR ONE OF THE  
12 MOTIONS THAT WE FILED, THAT YOU'VE RULED AS BEING UNTIMELY, IS  
13 THAT THE IDENTIFICATION OF MY CLIENT AS THE PERSON THAT THE  
14 GRAND JURY INDICTED IS ON SHAKY GROUNDS AND WAS DONE THROUGH  
15 VERY SUGGESTIVE MEANS. AND I WAS APPOINTED ONE DAY BEFORE THE  
16 MOTIONS DEADLINE RAN OUT. IT'S VERY DIFFICULT FOR ME TO --

17 THE COURT: WELL, I'M NOT GOING TO CONTINUE THIS  
18 TRIAL. I CAN GUARANTEE YOU THAT THAT'S NOT GOING TO OCCUR.  
19 YOUR MOTION IS ALLOWED. I'LL SUBMIT THE ISSUE TO THE JURY AS TO  
20 WHETHER OR NOT HE IS, IN FACT, THE PERSON CHARGED IN THE  
21 INDICTMENT. THANK YOU.

22 MR. COOPER: WILL HE BE REQUIRED TO PLEAD THIS  
23 MORNING, THEN?

24 THE COURT: YES, SIR, HE CERTAINLY WILL. THANK YOU.

25 (BENCH CONFERENCE CONCLUDED.)

[ [ EXHIBIT A-4 ] ]

TRIED IN OPEN COURT

(AO156(Rev.5/85) Verdict

on 12-3-93  
United States Court of  
U. S. District Court  
Eastern District of N. C.

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA

v.

VERDICT

CASE NO. 93-102-07-CR-5F

ALLEN MORSLEY  
a/k/a Raleek  
a/k/a Baldhead

WE, THE JURY FIND: the defendant, Allen Morsley, a/k/a Raleek,  
a/k/a Baldhead,

Gilty Gilty, as to Count 1,

Gilty Gilty, as to Count 17,

Gilty Gilty, as to Count 18,

Gilty Gilty, as to Count 37,

Gilty Gilty, as to Count 44,

Gilty Gilty, as to Count 80,

Gilty Gilty, as to Count 81,

Gilty Gilty, as to Count 95.

FOREPERSON'S SIGNATURE

DATE

12-3-93

29

1 MENTIONED CONCERNING YOUR ASSESSMENT OF THE CREDIBILITY OF ANY  
2 WITNESS IN GENERAL, AND SHOULD ALSO CONSIDER, IN PARTICULAR,  
3 WHETHER THE WITNESS HAD AN ADEQUATE OPPORTUNITY TO OBSERVE THE  
4 PERSON IN QUESTION AT THE TIME OR TIMES ABOUT WHICH THE  
5 WITNESS TESTIFIED. YOU MAY CONSIDER, IN THAT REGARD, SUCH  
6 MATTERS AS THE LENGTH OF TIME THE WITNESS HAD TO OBSERVE THE  
7 PERSON IN QUESTION, THE PREVAILING CONDITIONS AT THAT TIME IN  
8 TERMS OF VISIBILITY OR DISTANCE AND THE LIKE, AND WHETHER THE  
9 WITNESS HAD KNOWN OR OBSERVED THE PERSON AT AN EARLIER TIME.

10 YOU MAY ALSO CONSIDER THE CIRCUMSTANCES SURROUNDING  
11 THE IDENTIFICATION ITSELF INCLUDING, FOR EXAMPLE, THE MANNER  
12 IN WHICH A DEFENDANT WAS PRESENTED TO THE WITNESS FOR  
13 IDENTIFICATION, AND THE LENGTH OF TIME THAT ELAPSED BETWEEN  
14 THE INCIDENT IN QUESTION AND THE NEXT OPPORTUNITY THE WITNESS  
15 HAD TO OBSERVE THE DEFENDANT.

16 IF, AFTER EXAMINING ALL OF THE TESTIMONY AND  
17 EVIDENCE IN THE CASE, YOU HAVE A REASONABLE DOUBT AS TO THE  
18 IDENTIFY OF A DEFENDANT AS THE PERPETRATOR OF THE OFFENSES  
19 WITH WHICH HE IS CHARGED, YOU MUST FIND THAT DEFENDANT NOT  
20 GUILTY.

21 YOU HAVE HEARD EVIDENCE THAT A DEFENDANT  
22 SUBSEQUENTLY COMMITTED AN ACT SIMILAR TO THOSE CHARGED IN THIS  
23 CASE. YOU MAY NOT USE THIS EVIDENCE TO DECIDE WHETHER THE  
24 DEFENDANT, ALLEN MORSLEY, ALSO KNOWN AS RALEEK, ALSO KNOWN AS  
25 BALDHEAD, CARRIED OUT THE ACTS INVOLVED IN THE CRIMES CHARGED

1 HERE. HOWEVER, IF YOU ARE CONVINCED BEYOND A REASONABLE  
2 DOUBT, BASED ON OTHER EVIDENCE INTRODUCED, THAT HE DID CARRY  
3 OUT THE ACTS INVOLVED IN THE CRIMES CHARGED HERE, THEN YOU MAY  
4 USE THIS EVIDENCE CONCERNING A SUBSEQUENT ACT TO DECIDE  
5 WHETHER HE POSSESSED THE INTENT TO COMMIT THE OFFENSES CHARGED  
6 IN THE INDICTMENT.

7 REMEMBER, EVEN IF YOU FIND THAT THE DEFENDANT MAY  
8 HAVE COMMITTED A SIMILAR ACT, THIS IS NOT EVIDENCE THAT HE  
9 COMMITTED SUCH AN ACT IN THIS CASE. YOU MAY NOT CONVICT A  
10 PERSON SIMPLY BECAUSE YOU BELIEVE HE MAY HAVE SUBSEQUENTLY  
11 COMMITTED SIMILAR ACTS. THE DEFENDANT IS ON TRIAL ONLY FOR  
12 THE CRIMES CHARGED, AND YOU MAY CONSIDER THE EVIDENCE OF  
13 SUBSEQUENT ACTS ONLY ON THE ISSUE OF INTENT, KNOWLEDGE, OR  
14 MOTIVE.

15 DURING THE COURSE OF THE TRIAL, AS YOU KNOW FROM THE  
16 INSTRUCTION I GAVE YOU AT THE TIME, TESTIMONY OR EVIDENCE WAS  
17 RECEIVED WITH RESPECT TO ALLEN MORSLEY, ALSO KNOWN AS RALEEK,  
18 ALSO KNOWN AS BALDHEAD, ALLEGEDLY BEING IN POSSESSION OF  
19 COCAINE ON SEPTEMBER 23, 1993, AT THE KIDD STREET HOUSE. HE  
20 IS NOT CHARGED IN THE INDICTMENT FOR ANY OFFENSE RELATING TO  
21 THOSE DRUGS OR EVENTS OCCURRING ON THAT DATE. THE TESTIMONY  
22 REGARDING THE EVENTS ON SEPTEMBER 23, IN WHICH ALLEN MORSLEY,  
23 ALSO KNOWN AS RALEEK, ALSO KNOWN AS BALDHEAD, POSSESSED  
24 COCAINE, AT MOST, CONSTITUTES EVIDENCE OF "SIMILAR ACTS" IN  
25 RELATION TO THOSE ALLEGED IN THE INDICTMENT.

1           EVIDENCE THAT AN ACT WAS DONE AT ONE TIME, OR ON ONE  
2 OCCASION, IS NOT ANY EVIDENCE OR PROOF WHATEVER THAT A SIMILAR  
3 ACT WAS DONE AT ANOTHER TIME, OR ON ANOTHER OCCASION. THAT IS  
4 TO SAY, EVIDENCE THAT A DEFENDANT MAY HAVE COMMITTED AN ACT  
5 SIMILAR TO THE ACTS ALLEGED IN THE INDICTMENT MAY NOT BE  
6 CONSIDERED BY THE JURY IN DETERMINING WHETHER HE IN FACT  
7 COMMITTED ANY ACT CHARGED IN THE INDICTMENT.

8           NOR MAY EVIDENCE OF SOME OTHER ACT OF A LIKE NATURE  
9 BE CONSIDERED FOR ANY PURPOSE WHATEVER, UNLESS THE JURY FIRST  
10 FINDS THAT THE OTHER EVIDENCE IN THE CASE, STANDING ALONE,  
11 ESTABLISHES BEYOND A REASONABLE DOUBT THAT THE DEFENDANT DID  
12 THE PARTICULAR ACT CHARGED IN THE PARTICULAR COUNT OF THE  
13 INDICTMENT THEN UNDER DELIBERATION.

14           IF THE JURY SHOULD FIND BEYOND A REASONABLE DOUBT  
15 FROM OTHER EVIDENCE IN THE CASE THAT THE DEFENDANT, ALLEN  
16 MORSLEY, ALSO KNOWN AS RALEEK, ALSO KNOWN AS BALDHEAD, DID THE  
17 ACT CHARGED IN THE PARTICULAR COUNT UNDER DELIBERATION, THEN  
18 YOU MAY CONSIDER EVIDENCE AS TO AN ALLEGED ACT OF A LIKE  
19 NATURE, IN DETERMINING THE STATE OF MIND OR INTENT WITH WHICH  
20 HE DID THE ACT CHARGED IN THE PARTICULAR COUNT. AND WHERE  
21 PROOF OF AN ALLEGED ACT OF A LIKE NATURE IS ESTABLISHED BY  
22 EVIDENCE WHICH IS CLEAR AND CONCLUSIVE, THE JURY MAY, BUT IS  
23 NOT OBLIGED, TO DRAW THE INFERENCE AND FIND THAT, IN DOING THE  
24 ACT CHARGED IN THE PARTICULAR COUNT UNDER DELIBERATION, THE  
25 DEFENDANT ACTED WILLFULLY, AND NOT BECAUSE OF MISTAKE OR